

March 27, 2013

Delta Stewardship Council
Attention: Phil Isenberg, Chairman
650 Capital Mall, Fifth Floor
Sacramento, CA 95814

MASTER INFRASTRUCTURE AND UTILITY PLANS – PUBLIC COMMENTS

This letter supplements and supports the public comments presented by the City of Stockton to the Delta Stewardship Council in a letter to the DSC dated January 14, 2013. In particular this letter offers additional data, information and inferences from this information, and expert opinion supported by facts concerning Detailed Comments Number 15, 16 and 17.

I have been employed as a senior local government official in the development of municipal public works during the past 11 years and in offering these comments rely upon my academic training and professional experience in this field. In particular, I have worked extensively on planning, developing and operating municipal public works that are designed to serve the City's current population as well as accommodate anticipated growth during designated planning horizons.

Stockton municipal public works are planned, developed and constructed based upon master infrastructure and utility plans. The City of Stockton adopted these plans prior to passage of the Delta Reform Act and the introduction of DSC's co-equal goals. These pre-existing municipal infrastructure and public works plans may or may not be consistent with the subsequently created co-equal goals. However, in preparing and adopting these plans the City did not directly consider the DSC's co-equal goals because these goals were not yet standards to be considered by local government, or in most instances predate formation of the DSC. (While not directly relevant here, Stockton's adoption of these infrastructure plans occurred after the city first fully complied with the provisions of CEQA.

These plans are consistent with and accommodate Stockton's General Plan, the planned location and path of future urban development, the anticipated timing of future urban development and represent, in context of location, design and planned expansions, the most cost effective manner to deliver municipal services to existing and

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future city residents while balancing environmental concerns and promoting affordable housing objectives. The existing General Plan also contains important policies, goals and standards to encourage creating family wage jobs in the community. Stable and reliable infrastructure systems and plans, especially the ability of a municipality to expand the capacity of these systems according to and consistent with adopted land use plans, play a pivotal role in business location decisions that in turn expand and increase local job opportunities.

The public works plans correspond to and are integrated into approved planning documents such as the General Plan, the Sphere of Influence and the Municipal Service Review. To put a finer point on it, environmentally superior growth patterns depend upon the ability of Stockton to implement existing public works and infrastructure plans, and expand the capacity at existing locations.

Stockton has designed, located and constructed water, stormwater and wastewater facilities based upon these approved plans. The approximate construction cost of building these facilities exceeds \$500 million. This expense omits anticipated future costs to implement or expand facilities, consistent with the approved plans. The existing infrastructure was deliberately designed to be constructed in phases, with new phases generally corresponding to anticipated future needs as projected by the General Plan.

As expected, the anticipated implementation and expansion of these existing public works are based upon existing plans that did not and could not have accounted for the co-equal goals of the Delta Stewardship Council as either a factor or the controlling factor to be considered when preparing these plans. For instance, the location decision for the existing wastewater treatment plant was deliberately influenced to take advantage of gravity in-flows thereby lessening energy consumption and air pollution. The currently constructed public works for urban services—water, sewer and stormwater—are purposely planned, designed and constructed in anticipation that Stockton will periodically implement additional features and/or expand the capacity of the existing facilities. This strategy mirrors the approach of practically every municipality in California.

Indeed, and consistent with the current plans, Stockton has already expanded the capacity of these facilities and furthermore anticipates implementing existing infrastructure plans and/or expanding current facilities periodically in the future.

These governmental actions constitute Covered Actions under the DSC plan. A decision to implement or expand current public infrastructure for water, sewer and

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stormwater pivots on existing operating facilities that may conflict due to location or design with the co-equal goals and therefore the future Covered Action, an implementation or expansion decision, will be set aside by the DSC. Based upon a review of the current draft DSC plan, and considering the design, location and construction of Stockton's existing infrastructure facilities, it is clearly possible that the DSC may conclude the Covered Action, an expansion of an existing infrastructure facility in a manner consistent with a plan that pre-exists the DSC, which could run afoul of the co-equal goals. This result would make it will be impossible for Stockton to implement or expand the current facility in accordance with the DSC rules unless the facility is either relocated or substantially redesigned.

The cost of relocating a major public infrastructure facility equals or exceeds the facility's replacement cost. To the same extent, the cost of redesigning the facility, assuming there is not a problem with the location, could be prohibitive. This means Stockton will be forced to construct parallel facilities outside the jurisdictional reach of the DSC in order to accommodate anticipated and planned for growth.

This indirect impact will result in significant environmental effects not identified or addressed in the EIR. Current Stockton municipal service facilities, based upon comprehensive CEQA review, are located at environmentally superior sites. If Stockton is unable to expand or construct additional phases of existing facilities at least the following indirect environmental impacts will cascade from this action.

First, parallel facilities will not be constructed at locations that lessen the demand for energy and thus the amount of energy used and air pollution emitted to accommodate planned and anticipated growth will substantially increase. This indirect environmental effect is omitted and therefore not addressed in the EIR. Second, relocating the facilities elsewhere will encourage planned growth to follow relocated facilities (due to lower cost to develop on-site infrastructure and extend these services to new urban areas) from currently planned growth pattern which are designed to lessen air pollution and greenhouse gas emissions, lessen vehicular miles traveled and convert less agricultural land to urban uses than redirected growth following parallel public facilities. It is generally understood that altering anticipated or planning patterns of growth by the injection of subsequent regulations amounts to a secondary or indirect impact that must be addressed in an environmental impact report.

Thus, the DSC plan results in inducing or requiring that Stockton relocate existing facilities or requires construction of parallel facilities and therefore alters planned

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urbanization patterns. The current general plan offers a pattern of growth that accommodates anticipated growth while mitigating significant environmental effects to the extent practical and feasible. The DSC plan has the indirect consequence of severely altering this anticipated growth pattern and causes patterns of growth that are illogical, discontinuous and located to make environmental effects substantially more severe.

Third, this unintended and unstudied consequence has an additional and independent secondary impact of disrupting the orderly location of existing and planned public facilities such as police substations, fire substations and public schools. The orderly and logical accommodation of new growth under the general plan would be disrupted and produce new and/or more severe environmental effects due to a lack of correlation between growth patterns and public services. This would be present in the form of increased air pollution, greenhouse gas emissions, traffic congestion and the cost of municipal services.

This proposed regulatory activity and the attendant environmental effects is the precise type of activity that an EIR should study as a significant growth inducing impact:

“Included in this [growth inducing impact of the proposed project] are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects.”

CEQA Guideline §15126.2(d) (bracketed language added; language in parenthesis original).

Locating parallel infrastructure facilities when existing facilities cannot be implemented or expanded because the location or design of the existing facilities do not adhere to the co-equal goals removes obstacles for other areas to grow and receive significant population growth. These areas were by-passed during the comprehensive general plan process because urbanizing these areas resulting in more severe environmental consequences. Relocating public infrastructure to these areas removes the major obstacle to development and this significant but omitted environmental consequence needs to be identified and addressed in the DSC EIR.

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Although the Delta Plan excludes from covered actions development within the general plans and spheres of influence of the land use agencies, the plan fails to exclude from covered actions the expansion of the utilities and other public works necessary to serve such development. Such failure will negate the value of existing facilities which incorporate features for such expansion and in some cases will require replacement facilities outside the regulated area of the Delta Plan. The PEIR has failed to address the resulting associated substantial impacts of such failure. The DSC needs to adopt an exemption recognizing these existing facilities as exempt or vested against DSC regulations, including exempting subsequent utilization or expansion decisions, or otherwise revise the EIR.

A handwritten signature in black ink, appearing to read "Mel Lytle", is positioned above the printed name.

C. MEL LYTLE, Ph.D.
DIRECTOR OF MUNICIPAL UTILITIES

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